RABINDERA SINGH ARJAN SINGH, RE: EX P;
MALAYSIAN INTERNATIONAL MERCHANT BANKERS BHD.

HIGH COURT MALAYA, KUALA LUMPUR
SITI NORMA YAAKOB J
[CIVIL SUIT NO. C23-1052-86]
15 AUGUST 1989

BANKRUPTCY: *Creditors petition - Whether petition complies with s. 5(2) Bankruptcy Act 1976 - Security furnished by third party; certainty of sum stated in bankruptcy notice.*

The creditor had granted facilities to a company, Dhanoa Sdn. Bhd. which had furnished security in relation thereto. In addition the debtor had given his guarantee in relation thereto. The creditor sued the debtor on the said guarantee and judgment was entered against the debtor on 9 August 1986. The creditor filed a creditors petition dated 13 December 1988 against the debtor in relation to the sum adjudged due to them in the said judgment. The debtor objected to the said creditors petition on the grounds that did not comply with s. 5(2) of the Bankruptcy Act 1967 in that the creditor did not state therein that it was willing to give up the security furnished by the said company in the event that the debtor was declared bankrupt. It was further objected that the exact amount owing on the date of bankruptcy notice was not stated in the said creditor's petition.

Held:
[1] Section 5(2) of the Bankruptcy Act 1967 only applies when the debtor furnished the security himself.

[2] As the bankruptcy notice stated the amount adjudged due to the creditor in the judgment inclusive of costs and interests up to 23 May 1988 there was no confusion of the amount the debtor had to pay in order to avoid being declared bankrupt.

[Adjudication and receiving order granted.]

Case referred to:
Ex-parte West Riding Union Banking Company [1881] 19 Ch D 105

Legislation referred to:
Bankruptcy Act 1967, ss. 2, 5(2)

For the debtor/applicant - A Kanesalingam; M/s. Kaneslingam & Co.
For the creditor/respondent - S M Yoong; M/s. Shook Lin & Bok

JUDGMENT

Siti Norma Yaakob J:

When the creditors petition dated 13 December 1988 came before me on 10 July 1989, the debtor raised the following 2 objections.

1. The petition does not comply with s. 5(2) of the Bankruptcy Act 1967, (the Act).
2. The bankruptcy notice does not state the amount owing as at date of the bankruptcy notice.

Section 5(2) of the Act states as follows:

> If the petition creditor is a secured creditor, he must, in his petition, state that he is willing to give up his security for the benefit of the creditors in the event of the debtor being adjudged a bankrupt or give an estimate of the value of the security...

It is the debtor's contention that as the petitioner in this case are secured creditors, they had failed to state in their petition their willingness to give up the security in the event he was declared a bankrupt or give an estimate of the value of the security. Since the petition has not complied with s. 5(2) of the Act, the debtor further contends that the petition should be struck off.

Section 2 of the Act defines a "secured creditor" as being "a person holding a mortgage, charge or lien on the **property of the debtor** or any part thereof, as a security of a debt due to him from the debtor but shall not include a plaintiff in any action who has attached the property of the debtor before judgment". (Emphasis is mine).

From this definition, it is clear that the requirement to state the petitioner's willingness to give up the security or give the value of the security in the petition under s. 5(2) only applies where the security is supplied by the debtor himself and not by some other third party. See the case of *Ex-parte West Riding Union Banking Company* [1881] 19 Ch D 105. On the facts of the case before me, the security came from a third party, the borrower known as Dhanoa Sdn. Bhd. In the civil suit, the debtor was sued as a guarantor and that the judgment on which the present petition is based arose out of the debtor's liability as a guarantor. As the debtor did not provide the security, the requirement of s. 5(2) of the Act does not apply.

As for the debtor's objection that the bankruptcy notice does not state the exact amount due as at the date of notice, I do not consider there is any merit to that objection. The bankruptcy notice has stated the liquidated sum due on the judgment dated 9 August 1986 inclusive of costs and interests calculated up to 23 May 1988. There is no confusion of the amount the debtor has to pay in order to avoid bankruptcy.

Following the dismissal of the debtor's objection, I had accordingly decreed that receiving and adjudicating orders and costs be made against him.

Also found at [1989] 2 CLJ 858